

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DAVID A. SPENCER,

Plaintiff,

v.

No. 16cv841 MCA/KK

STATE OF NEW MEXICO, *et al.*,

Defendants.

MEMORANDUM OPINION AND ORDER SHOW CAUSE

THIS MATTER comes before the Court on the State Defendants’ Motion to Dismiss, Doc. 16, filed April 21, 2017, and on the State of New Mexico’s Amended Motion to Dismiss, Doc. 27, filed May 3, 2017. For the reasons stated below, the Court will **DENY** both Motions **as moot**. Plaintiff shall, within 14 days of entry of this Order, show cause why the Court should not make the Amended Complaint, Doc. 8, filed September 14, 2016, accessible to all parties and the public. Failure to timely show cause will result in the Court making the Amended Complaint accessible to all parties and the public.

The State Defendants’ Motion to Dismiss asks the Court to dismiss the claims against the State of New Mexico, the Eleventh Judicial District Court, the Honorable Sandra Price, District Attorney Robert “Rick” Tedrow, and Deputy District Attorney Dustin O’Brien on the ground that the Court’s deadline for Plaintiff to file an amended Complaint was October 3, 2016, and Plaintiff has not yet filed an amended Complaint. Doc. 16 at 2.

The Court will deny the State Defendant’s Motion to Dismiss as moot because Plaintiff filed his Amended Complaint on September 14, 2016. *See* Doc. 8. However, Plaintiff filed his Amended Complaint electronically as “Ex Parte” making the Amended Complaint inaccessible to the other parties to this case and the public. The Court will order Plaintiff to show cause why the

Court should not make the Amended Complaint, Doc. 8, filed September 14, 2016, accessible to all parties and the public. *See JetAway Aviation, LLC v. Bd. of Cnty. Comm'rs*, 754 F.3d 824, 826 (10th Cir. 2014) (per curiam) (“To overcome [the] presumption against sealing, the party seeking to seal records must articulate a real and substantial interest that justifies depriving the public of access to the records that inform our decision-making process”). Failure to timely show cause will result in the Court making the Amended Complaint accessible to all parties and the public.

The State of New Mexico’s Amended Motion to Dismiss seeks dismissal of the claims against the State of New Mexico because Plaintiff “still has not effectuated service on the State” and “has not sought an extension of time to complete service.” Doc. 27 at 3.

Plaintiff is proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915. *See* Mem. Op. and Order at 1-2, 7, Doc. 7, filed September 12, 2016. Section 1915 provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*]”). 28 U.S.C. § 1915(d). Rule 4 provides that:

At the plaintiff’s request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916.

Fed. R. Civ. P. 4(c)(3). The Court did not order service of Summons and Complaint on Defendants when it granted Plaintiff leave to proceed *in forma pauperis* and stated that “[t]he Court will order service if Plaintiff timely files an amended complaint which states a claim and includes the addresses of every defendant named in the amended complaint.” Doc. 7. If the Court determines, after its review pursuant to 28 U.S.C. § 1915(e)(2), that the Amended Complaint states a claim against any of the State Defendants, the Court will order service of summons and Amended Complaint on those Defendants.


The Court will deny the State Defendant's Motion to Dismiss and the State of New Mexico's Amended Motion to Dismiss as moot because the Court has not yet ordered service of summons and Amended Complaint on the State Defendants.

IT IS ORDERED that:

(i) State Defendants' Motion to Dismiss, Doc. 16, filed April 21, 2017, is **DENIED as moot;**

(ii) the State of New Mexico's Amended Motion to Dismiss, Doc. 27, filed May 3, 2017, is **DENIED as moot;** and

(iii) Plaintiff shall, within 14 days of entry of this Order, show cause why the Court should not make the Amended Complaint, Doc. 8, filed September 14, 2016, accessible to all parties and the public.



M. CHRISTINA ARMIÑO
CHIEF UNITED STATES DISTRICT JUDGE